

Protest of)	Date: June 19, 1991
)	
HI-TECH POWER WASH, INC.)	
)	
Solicitation No. 249990-91-A-0069)	P.S. Protest No. 91-30

DECISION

Hi-Tech Power Wash, Inc. ("Hi-Tech"), protests the terms of Solicitation No. 249990-91-A-0069, contending that the solicitation is ambiguous with respect to the number of locations for which an offeror must submit an offer.

The solicitation for vehicle washing services at forty-six postal facilities was issued by the Woburn Procurement and Materiel Management Service Office on February 28, 1991, with an offer due date, as amended, of April 4. Attachment 2 of the solicitation contained a separate page for each of the forty-six postal facilities describing the washing services that were to be performed at that location. The Solicitation Instructions, attached to the front of the solicitation package, outlined the procedure to be used by offerors in the submission of proposals. The instructions provided:

COMPLETE AND RETURN THE FOLLOWING:

Attachment 2 - 1 each of pages 1 thru 46 locations (if you submit an offer for two (2) locations submit those two (2) pages. If you submit an offer for ten (10) locations submit ten (10) offers for the Ten (10) locations. **SUBMIT ONLY THOSE LOCATIONS YOU WISH TO SUBMIT AN OFFER FOR, THOSE LOCATIONS THAT YOU DO NOT WISH TO SUBMIT AN OFFER FOR MUST BE RETAINED BY YOU.**

Section M.1 of the solicitation provided, in pertinent part:

Each offeror is advised that the Postal Service will enter into contracts with only the offeror(s) whose proposal(s) represents the best overall value to the Postal Service.

Proposals were received from nine offerors. Three of the nine offerors submitted proposals for all forty-six locations. This protest, dated April 29, 1991, was forwarded to our office on May 22 for consideration pursuant to Procurement Manual (PM) 4.5.7. Award has been

delayed pending the outcome of this protest.

In its protest, Hi-Tech claims that the solicitation package is ambiguous since it "did not clearly specify that the contract award could be broken up into individual locations." Hi-Tech states that it assumed that a bid had to be made for all of the locations and that this assumption affected the price in its bid.^{1/}

In his report, the contracting officer points out that the instructions attached to the front of the solicitation clearly revealed that the Postal Service wanted to have the option of making multiple awards for the forty-six locations. The contracting officer further argues that the use of the plural word "contracts" in Section M reflects the possibility that more than one award would be made. The contracting officer also points out that the announcement that appeared in the Commerce Business Daily, Issue No. PSA-0297, dated March 11, 1991, clearly states that the Postal Service intended to consider making multiple awards for the forty-six separate locations.

The contracting officer notes that since six of the nine offerors did not submit proposals for all forty-six locations, the majority of the offerors understood that there could be multiple awards made under this solicitation. Finally, the contracting officer states that even if the protest were to be sustained, the protester would not be entitled to award since its proposal did not offer the lowest price.

North Shore Service Co., one of the offerors, submitted comments stating that after a careful reading of all the instructions included in its solicitation package, it was clear "that this bid was being offered to multiple vendors."

Discussion

At the outset, there is a question whether Hi-Tech's protest has been timely filed.^{1/} "Protests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals." PM 4.5.4 b. Since Hi-Tech did not raise its concerns about the ambiguity in the solicitation until April 29, more than three weeks after proposals had been received, those concerns cannot be considered on their merits. "This timeliness requirement is jurisdictional and cannot be waived." TLT Construction Corp., Inc., P.S. Protest No. 89-75, January 18, 1990. The protest must be dismissed as untimely.

Nevertheless, for purposes of clarification, we will comment briefly on the issue presented by Hi-Tech. "A solicitation is not ambiguous unless susceptible to two or

^{1/}The term "bid" is incorrect because this word applies only to formally advertised procurement procedures. The correct term of art in a negotiated procurement like this one is "offer" See Dataview Corporation, P.S. Protest No. 90-31, July 19, 1990; Handling Systems, Inc., P.S. Protest No. 89-70, December 19, 1989.

^{2/}"Although no party to this proceeding has raised the issue of timeliness, we may do sua sponte because it affects the jurisdiction of our office to adjudicate [the protester's] assertions." Coopers & Lybrand, P.S. Protest No. 89-91, March 21, 1990.

more reasonable interpretations." Compo Corporation, P.S. Protest No. 88-22, May 3, 1988. Moreover, "[t]o be reasonable, an interpretation must be consistent with the solicitation read as a whole." Pitney Bowes, Inc., P.S. Protest No. 89-24, June 20, 1989, quoting Tek-Lite, Inc., Comp. Gen. Dec. B-225747.2, 87-2 CPD & 223, September 4, 1987.

Here, the instructions attached to the solicitation indicated that offerors did not have to make an offer for all forty-six locations, since offerors were instructed to submit with their offers only the pages describing the locations for which they were proposing and to retain the pages for the locations for which they did not wish to propose. Given these directions, it would have been unreasonable for an offeror to conclude that the solicitation required that offers be submitted for all forty-six locations. We thus conclude that the solicitation is not ambiguous.

The protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 8/11/93]